

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Metropolitan Radio Group of Florida, Inc.	)	File No. EB-03-TP-231
	)	
Licensee of AM Radio Station WRXB, St. Petersburg, Florida	)	NAL/Acct. No. 200332700030
	)	
Springfield, Missouri	)	FRN 0007006884
	)	

**FORFEITURE ORDER**

**Adopted: June 28, 2004****Released: June 30, 2004**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of seven thousand dollars (\$7,000) to Metropolitan Radio Group of Florida, Inc. (“Metro Radio”), licensee of Station WRXB(AM), St. Petersburg, Florida, for willful and repeated violation of Section 73.49 of the Commission’s Rules (“Rules”).<sup>1</sup> The noted violation involves Metro Radio’s failure to maintain effective locked fences around the bases of its three AM antenna towers or a protective property fence around the three antenna towers.

**II. BACKGROUND**

2. On May 15, 2003, two agents from the Commission's Tampa Field Office (“Tampa Office”) inspected Station WRXB(AM) in St. Petersburg, Florida. The agents observed that each of the station’s three antenna towers had radio frequency potential at their bases. They also found that none of the station’s three AM antenna towers were enclosed within an effective locked fence. A perimeter fence surrounded the property containing the three towers; however, the main entrance gate to the property was open and unlocked allowing unrestricted access to the bases of all three towers. Station personnel stated that the entrance gate to the property remained opened and unlocked for a month prior to the inspection.

3. On August 25, 2003, the Tampa Office issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to Metro Radio in the amount of seven thousand dollars (\$7,000).<sup>2</sup> Metro Radio filed a response to the NAL on September 24, 2003, seeking a reduction or cancellation of the proposed forfeiture. Although it acknowledged that the gate was unlocked when the agents visited the station, Metro Radio disputes that the gate was unlocked for a period of over a month. Metro Radio asserts that the local management adopted this policy of unlocking the gate during normal business hours “for a brief

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<sup>1</sup>47 C.F.R. § 73.49.

<sup>2</sup>*Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332700030 (Enf. Bur., Tampa Office, released August 25, 2003).

period of time.”<sup>3</sup> It further states that it discontinued this practice after the agents’ inspection. Metro Radio claims that the station maintained additional fencing within the perimeter fencing “that further restricts individuals who enter the property to access the studio building from approaching the transmission towers”<sup>4</sup> and that station personnel monitored the pathway from the gate to the building. Metro Radio also notes that it hired a firm to erect interior fencing around the base of each tower. Finally, it argues the forfeiture should be reduced in light of its overall history of compliance with the Rules.

### III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),<sup>5</sup> Section 1.80 of the Rules,<sup>6</sup> and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”). In examining Metro Radio’s response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>7</sup>

5. Section 73.49 of the Rules requires AM antenna towers having radio frequency potential at the base (series fed, folded unipole, and insulated base antennas) to be enclosed within an effective locked fence or other enclosure.<sup>8</sup> Alternatively, individual tower fences need not be installed if multiple towers are contained within a protective property fence.<sup>9</sup> Metro Radio acknowledges that the individual towers were not enclosed by separate effective locked fences. Although Metro Radio admitted that the main gate of the perimeter fence was open for an undisclosed period of time, Metro Radio asserts that its additional interior fencing combined with its monitoring of the gate were sufficient to comply with the Rules or justify reduction of the forfeiture. The agents’ observations and statements of Metro Radio station employees made to the agents, however, are inconsistent with Metro Radio’s assertions. On May 15, 2003, the agents were able to enter unimpeded through the main gate. They observed that the three antenna towers were located along the driveway in between the main gate and the studio. They did not observe any additional interior fencing or monitoring of the gate by station personnel. On May 15, 2003, station personnel stated the main gate was open during regular business hours for at least a month. Because the perimeter fence allowed unimpeded access to the towers by the public for at least several days, we conclude it was not a protective property fence during those days. Therefore, we find that Metro Radio’s violation of Section 73.49 of the Rules was willful<sup>10</sup> and repeated.<sup>11</sup>

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<sup>3</sup>Metro Radio Response at 2.

<sup>4</sup>*Id.* at 1.

<sup>5</sup>47 U.S.C. § 503(b).

<sup>6</sup>47 C.F.R. § 1.80.

<sup>7</sup>47 U.S.C. § 503(b)(2)(D).

<sup>8</sup>47 C.F.R. § 73.49.

<sup>9</sup>*Id.*

<sup>10</sup>Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful,’ ... means the conscious and deliberate (continued....)

6. Metro Radio asserts that the forfeiture should be reduced or cancelled because it took prompt action to discontinue the open gate policy and place an order for fencing around the three antennas. Metro Radio's remedial actions, however, to correct promptly violations after they have been identified by an agent is expected and does not warrant a reduction in the forfeiture amount.<sup>12</sup>

7. Finally, Metro Radio claims that the forfeiture should be reduced or cancelled in light of its overall history of compliance with the Rules. We disagree. We recently issued a *Forfeiture Order* in the amount of twelve thousand dollars (\$12,000) against the Metropolitan Radio Group, Inc. for willful violation of Sections 73.1125(a) and 73.3526(b) of the Rules.<sup>13</sup> Metropolitan Radio Group, Inc. owns 100 percent of the assets of Metro Radio.<sup>14</sup> Because Metro Radio's parent company has previously violated the rules, we find that a reduction of the assessed forfeiture amount is not warranted.

8. We have examined Metro Radio's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Metro Radio willfully and repeatedly violated Section 73.49 of the Rules and find no basis for cancellation or reduction of the forfeiture proposed for this violation.

9. Although Metro Radio asserted in its response to the *NAL* that it had discontinued its open gate policy after the May 15, 2003 inspection, installed additional interior fencing within the perimeter fence that restricted people from approaching the towers, and placed orders to build base fences around the three towers, we have reason to question whether Metro Radio has come into compliance with Section 73.49 of the Rules. Following receipt of an interference complaint against Station WRXB(AM), two agents from the Tampa Office again inspected the station on April 29, 2004. The agents observed that the main gate of the perimeter fence remained open and unattended and that there was no chain or lock hanging from the fence. The agents also found that there were no base fences around the three towers and no additional interior fencing. In order to assist the Commission in determining what, if any, additional enforcement action may be appropriate, pursuant to Section 308(b) of the Act,<sup>15</sup> we require Metro Radio to report to the Enforcement Bureau no more than thirty days after the release of this *Forfeiture Order* whether it has come into compliance with Section 73.49 of the Rules by locking the

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commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act ...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>11</sup> As provided by 47 U.S.C. § 312(f)(2), a continuous violation is "repeated" if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97<sup>th</sup> Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn. 56 (2003).

<sup>12</sup> See *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21861, 21864-75 (2002); *Sonderling Broadcasting Corp.*, 69 FCC 2d 289, 291 (1978); *Odino Joseph*, 18 FCC Rcd 16522, 16524, para. 8 (Enf. Bur. 2003); *South Central Communications Corp.*, 18 FCC Rcd 700, 702-03, para. 9 (Enf. Bur. 2003); *Northeast Utilities*, 17 FCC Rcd 4115, 4117, para. 13 (Enf. Bur. 2002).

<sup>13</sup> *Forfeiture Order*, NAL/Acct. No. 20033262003, DA 04-1306 (rel. May 12, 2004).

<sup>14</sup> See Ownership Report for Commercial Broadcast Stations, File No. BOA-20030917ABS, submitted by Metro Radio on September 17, 2003.

<sup>15</sup> 47 U.S.C. § 308(b).

perimeter fence surrounding Station WRXB(AM) at all times or erecting individual base fences around each of its three AM towers. Metro Radio's report must be submitted in the form of an affidavit or declaration, under penalty of perjury, signed by an officer or director of the licensee. Metro Radio should note that continued noncompliance could result in additional enforcement actions.

#### IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>16</sup> Metropolitan Radio Group of Florida, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of seven thousand dollars (\$7,000) for willfully and repeatedly violating Section 73.49 of the Rules.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>17</sup> Payment shall be made by mailing a check or similar instrument, payable to the order of the "Federal Communications Commission," to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note NAL/Acct. No. 200332700030, and FRN 0007006884. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>18</sup>

12. **IT IS FURTHER ORDERED** that, pursuant to Section 308(b) of the Act,<sup>19</sup> Metropolitan Radio Group of Florida, Inc. must submit the report described in paragraph 9 above, no more than thirty (30) days following the release of this *Forfeiture Order*, to the Federal Communications Commission, Enforcement Bureau, South Central Region, 520 NE Colbern Road, Lee's Summit, MO 64086, Attention: Regional Counsel.

13. **IT IS FURTHER ORDERED** that, a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to Metropolitan Radio Group of Florida, Inc.'s counsel, Anthony T. Lepore, Esq., Post Office Box 823662, South Florida, FL 33082-3662.

#### FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

<sup>16</sup>47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>17</sup>47 U.S.C. § 504(a).

<sup>18</sup>See 47 C.F.R. § 1.1914.

<sup>19</sup>47 U.S.C. § 308(b).